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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,909	09/30/2003	Timothy Brian Nestor	030627/267422	9010
826	7590	05/17/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			MAYES, DIONNE WALLS	
			ART UNIT	PAPER NUMBER
			1731	

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/674,909

Applicant(s)

NESTOR ET AL.

Examiner

Dionne Walls Mayes

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8, 15-26, 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strubel (US. Pat. No. 4,892,109).

Strubel discloses nearly all that is recited in the claims since it teaches a smoking article including a cylindrical, open-ended sleeve 12 which circumscribes a porous material 36 (corresponding to the claimed "inner portion") – which can be fabricated of tobacco – containing aerosol generating material ("corresponding to the claimed "aerosol forming material") therein (See entire document). While Strubel may not specifically state that the tobacco that comprises the porous material 36 is processed such that at least a portion of a solvent soluble portion of the tobacco material is removed therefrom, it follows that one having ordinary skill in the art would have removed a portion of the nicotine from the tobacco since such is a common practice in the cigarette art in order to provide the user with less of the additive substance found in tobacco. Also, while Strubel may not state that the porous cigarette paper have a porosity of at least 15/20 CORESTA, this is not deemed to be an attribute that would distinguish it from the claimed recitation since such a wrapper is readily available on the

market, as admitted by Applicant, and one having ordinary skill in the art would have used such a wrapper on the smoking article of Strubel.

3. Claims 1, 3-17, 19-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strubel (US. Pat. No. 5,060,667).

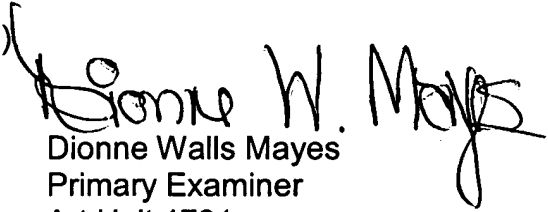
Strubel discloses nearly all that is recited in the claims since it teaches a smoking article, which would obviously have a lighting end and a mouth end (and which is especially apparent in Fig. 1), having a flavor source material 26 (corresponding to the claimed "inner portion") which may be tobacco, or reconstituted tobacco, saturated (corresponding to the claimed "in intimate contact with"/"at least about 20%") with an aerosol producer (corresponding to the claimed "aerosol forming material"), such as glycerin. Said smoking article also has a porous cigarette paper 34 (corresponding to the claimed "outer wrapping material") circumscribing it (see col. 2, lines 15-21). While Strubel may not specifically state that the tobacco that comprises the flavor source material 26 is processed such that at least a portion of a solvent soluble portion of the tobacco material is removed therefrom, it follows that one having ordinary skill in the art would have removed a portion of the nicotine from the tobacco since such is a common practice in the cigarette art in order to provide the user with less of the additive substance found in tobacco. Also, while Strubel may not state that the porous cigarette paper have a porosity of at least 15/20 CORESTA, this is not deemed to be an attribute that would distinguish it from the claimed recitation since such a wrapper is readily available on the market, as admitted by Applicant, and one having ordinary skill in the art would have used such a wrapper on the smoking article of Strubel.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Walls Mayes whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Dionne Walls Mayes
Primary Examiner
Art Unit 1731

May 15, 2006